United States Court of Appeals

for the Second Circuit

PETITIONER'S BRIEF AND APPENDIX

76-4057

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

LUIS MARIANO VALENCIA-BURGOS (A18 095 575)

Petitioner,

vs.

DOCKET NO.
76-4057

IMMIGRATION & NATURALIZATION SERVICE,

Respondent.

B
P/S

BRIEF OF PETITIONER

+ Appendix

RHODA K. DRYER
485 Madison Avenue
New York, New York 10022

Attorney for Petitioner

UNITED STATES COURT OF APPEALS
FILED
MAY 11 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

APPENDIX

A. ORDER OF IMMIGRATION JUDGE IRA FIELDSTEEL DATED MAY 7TH, 1975

B. LETTER MOTION TO REOPEN DEPORTATION PROCEEDINGS DATED JULY 11TH, 1976

C. APPLICATION FOR SUSPENSION OF DEPORTATION

D. NEW YORK POLICE DEPARTMENT GOOD CONDUCT CERTIFICATE

E. AFFIDAVIT OF PETITIONER'S SISTER, NURY VARGAS

F. AFFIDAVIT OF JOHN D'ATTOMA

G. AFFIDAVIT OF ANTHONY CALANDRA

H. AFFIDAVIT OF JOSEPH GALLAGHNER

I. GOVERNMENT BRIEF IN OPPOSITION TO MOTION TO REOPEN

J. ORDER DENYING MOTION TO REOPEN

K. NOTICE OF APPEAL TO BOARD OF IMMIGRATION APPEALS

L. DECISION OF BOARD OF IMMIGRATION APPEALS

M. WARRANT OF DEPORTATION

N. NOTICE TO SURRENDER FOR DEPORTATION

PAGINATION AS IN ORIGINAL COPY

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

LUIS MARIANO VALENCIA-BURGOS (A18 095 575),

Petitioner,

vs.

DOCKET NO.
76-4057

IMMIGRATION & NATURALIZATION SERVICE,

Respondent,

BRIEF OF PETITIONER

RHODA K. DRYER
485 Madison Avenue
New York, New York 10022

Attorney for Petitioner

Herman Leibowitz:
On the Brief

NATURE OF ACTION

This is a petition for review of a final order of the Board of Immigration Appeals dated January 21, 1976, affirming the decision of the Immigration Judge which denied the petitioner's motion to reopen his deportation proceedings to apply for suspension of deportation.

JURISDICTION AND VENUE

This Court has jurisdiction pursuant to section 106(a) of the Immigration and Nationality Act, 8 U.S.C. Sec.1105a(a)

Venue is based upon the petitioner's residence at 47-18 47th Avenue, Queens, New York and upon the place where his deportation proceedings were held; to wit, Immigration and Naturalization Service, 20 West Broadway, New York, New York.

STATEMENT OF FACTS

On May 7, 1975 petitioner, unrepresented by Counsel, appeared for a deportation hearing before Judge Ira Fieldsteel at the Immigration and Naturalization Service in New York City. Judge Fieldsteel entered an order granting petitioner the privilege of voluntary departure on or before July 15, 1975.

Prior to the expiration of his voluntary departure time, petitioner, by his attorney Rhoda K. Dryer, moved to reopen his deportation hearing to apply for suspension of deportation and submitted from I-256A and supporting documents.

On or about October 10, 1975, Judge Fieldsteel entered an order denying the motion to reopen, having concluded without a

hearing on the motion or on the application, that petitioner had been in the United States barely more than seven years and that the hardship to petitioner's permanent resident sister was minimal in the nature since her husband is capable of working and may in fact be re-employed. He found an inadequate basis for the grant of suspension of deportation. No decision was rendered as to reinstatement of the privilege of voluntary departure.

A notice of appeal was timely filed, and by a decision dated January 21, 1976, the Board of Immigration Appeals dismissed the appeal. The decision was silent as to reinstatement of the privilege of voluntary departure to petitioner.

On January 30, 1976 a warrant of deportation was issued and on February 17, 1976 a notice to report for deportation on February 23, 1976 was issued.

The petitioner has exhausted his administrative remedies.

The order sought to be reviewed herein has never been reviewed by any court in any civil or criminal proceeding.

SYNOPSIS OF ARGUMENT

I. Petitioner, in all respects, comes within the purview of section 244(a)(1) of the Immigration and Nationality Act, 8 U.S.C. Section 1254(a)(1) and therefore, in the discretion of the Attorney General, may be granted suspension of deportation.

II. The decision of the Board of Immigration Appeals affirming the denial of petitioner's motion to reopen his deportation proceeding in order to apply for suspension of deportation was arbitrary, capricious and an abuse of discretion, as well as being a denial of due process of law.

A. The courts have the power to review the essential fairness of the administrative process concerning the application of section 244 of the Immigration and Nationality Act.

B. If the discretion of the Board of Immigration Appeals in denying an application for suspension of deportation is shown to have been formulated on arbitrary consideration, then the court may interfere in the administrative process.

C. In affirming the decision of the Immigration Judge, the Board of Immigration Appeals adopted as its own a decision that was arbitrary, capricious, and an abuse of discretion.

D. In his Order Denying Motion to Reopen, the Immigration Judge repeatedly reached conclusions that were irrelevant or contrary to the substantial weight of the evidence of record.

E. The Board of Immigration Appeals, in affirming the decision of Immigration Judge which was made without affording petitioner an opportunity to be heard on his motion to reopen his deportation proceedings, violated the due process clause of the Fifth Amendment.

III. The failure of the Immigration Judge and the Board of Immigration Appeals to rule on the issue of reinstatement of the privilege of voluntary departure were arbitrary and capricious actions and constituted a failure by these administrative bodies to exercise their discretion.

A. Petitioner, in pursuing his right to an administrative reopening of his deportation proceeding, lost his previously established privilege of voluntary departure due to the silence of these administrative bodies.

B. Petitioner's motion to reopen his deportation proceedings should have been construed to include a prayer to restore the privilege of voluntary departure, and there exists a compelling reason for the restoration of this privilege; viz, petitioner's time for voluntary departure expired during the time petitioner was pursuing his administrative remedies and the District Director, the Immigration Judge and the Board of Immigration Appeals were all silent as to this matter of vital importance to petitioner.

IV, Conclusion

ARGUMENT

I. PETITIONER, IN ALL RESPECTS, COMES WITHIN THE PURVIEW OF SECTION 244(a)(1) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1254(a)(1) AND THEREFORE, IN THE DISCRETION OF THE ATTORNEY GENERAL, MAY BE GRANTED SUSPENSION OF DEPORTATION.

Section 244(a)(1) of the Immigration and Nationality Act states:

> SUSPENSION OF DEPORTATION; VOLUNTARY DEPARTURE
> As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who applies to the Attorney General for suspension of deportation and-
>
> (1) is deportable under any law of the United States except the provision specified in paragraph (2) of this subsection; has been physically present in the United States for a continuous period of not less than seven years immediately preceding the the date of such application, and proves that during all of such period he was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or to his spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence....

Neither the Immigration Judge nor the Board of Immigration Appeals denied that petitioner had the requisite seven years of continuous physical presence in the United States required by Section 244(a)(1). The Immigration Judge noted in his Order Denying Motion to Reopen that the seven years had accrued during the time in which petitioner was supposed to depart voluntarily from the United States. There is nothing in the statute or in the case law, however, which prohibits the accrual of the seven years in this manner. Section 244(a)(1) specifies that the alien shall have been "physically present in the United States for a continuous period of not less than seven years immediately preceding the date of such application" for suspension of deportation. Petitioner fulfills this requirement, having lawfully entered the United States as a student on July 4, 1968 and having moved for suspension of deportation on July 11, 1975.

Petitioner's motion on July 11, 1975 to reopen deportation proceedings in order to apply for the privilege of suspension of deportation was made prior to the deadline for his voluntary departure of July 15, 1975. The fact that petitioner's time for voluntary departure had not yet expired at the time he made his motion to reopen deportation proceedings distinguishes this case from Matter of Sipus, Int.Dec.#2172(B.I.A.1972), cited by respondent in its Brief in Opposition to Motion to Reopen. In Matter of Sipus petitioner had stayed beyond the deadline for her voluntary departure and did not make a motion to reopen deportation proceedings until two months after such deadline had passed.

The requirement under section 244(a)(1) that the applicant for suspension of deportation be of good moral character is amply met by petitioner. Petitioner has had no adverse contact with law enforcement agencies.(See annexed Police Report of Good Behavior). He has held the same job and lived at the same address since he first went to work as a welder in October 1969. Affidavits of his employer and fellow workers(annexed hereto) attest to his skill, dependability and integrity. Petitioner's good moral character and sense of responsibility is further illustrated by the fact that he lives with his sister (a permanent resident of the United States) and her family and contributes a substantial portion of his earnings toward their support. Without petitioner's financial support, his sister, her husband and their two children would be forced to live on the sister's earnings of $100.00 per week, since the sister's husband suffers from a back injury and is unable to work. (see annexed affidavit of petitioner's sister, Nury Vargas).

It is evident that petitioner's sister and her family would suffer"extreme hardship" within the meaning of section 244 (a)(1) if petitioner were deported or otherwise ordered to leave the United States. The fact that extreme hardship would be suffered by a sister of petitioner, rather than by a "spouse, parent or child" of petitioner does not preclude petitioner from the benefit of Section 244(a)(1) of the Immigration and Nationality Act. Cases interpreting this language in section 244(a)(1) consistently hold that the test is one of "close family ties" rather than any particular blood relationship. See Llacer v. I.N.S.,388

F. 2d 681 (9th cir.1968); Melachrinos V. Brownell,230 F.2d 42,43(D.C. Cir. 1956); U.S. ex rel. Ciannamea v. Neelly,202 F.2d 289,293(7th Cir.1953). Indeed, the courts have noted that since section 244 was intended to enable the Attorney General to prevent hardship and injustice, the section should not be strictly and technically construed. See Wadman v.I.N.S., 329 F.2d 812,816-17(9th Cir. 1964). Git Foo Wong v. I.N.S., 358 F.2d 151,154 (9th Cir. 1966).

In addition to the extreme economic hardship which would be suffered by petitioner's sister and her family by petitioner's deportation, there is also the readily apparent emotional hardship which would be incurred by petitioner and his sister and her family by their separation after living under the same roof for seven years. There would be the additional emotional hardship to petitioner of wondering how his sister could support her family of four solely on her earnings of $100.00 per week, especially in view of her opinion that public assistance is "degrading"(see annexed affidavit of petitioner's sister, Nury Vargas). Emotional hardship has been recognized as being within the contemplation of section 244 (see Yong v. I.N.S., 459 F.2d 1004,1005(9th Cir.1972), and it is suggested that this form of hardship should have been given significant consideration in the disposition of petitioner's case on the administrative level.

II. THE DECISION OF THE BOARD OF IMMIGRATION APPEALS AFFIRMING THE DENIAL OF THE PETITIONER'S MOTION TO REOPEN HIS DEPORTATION PROCEEDING IN ORDER TO APPLY FOR SUSPENSION OF DEPORTATION WAS ARBITRARY, CAPRICIOUS AND AN ABUSE OF DISCRETION, AS WELL AS BEING A DENIAL OF DUE PROCESS OF LAW.

The Courts have the power to review the essential fairness of the administrative process concerning the application of section 244 of the Immigration and Nationality Act. U.S. ex rel Accardi v. Shaughnessy, 347 U.S. 260,268(1954). An administrative determination as to eligibility for discretionary suspension of deportation is subject to judicial scrutiny for proper application of the conditions prescribed in section 244. Wong Wing Hang v. I.N.S., 360 F. 2d 715,717 (2nd Cir. 1966). In reviewing action of the Board of Immigration Appeals, the function of the court is to determine whether the Board abused its discretion. Goon Wing Wah v. I.N.S., 386 F.2d 292,294(1st Cir. 1967). If the discretion of the Board in denying an application for suspension of deportation is shown to have been formulated on arbitrary consideration, then the court may interfere in the administrative process. U.S. ex rel Hintopoulos v. Shaughnessy,233 F.2d 705,708 (2nd Cir. 1956), aff'd 353 U.S. 72(1957). The test is whether the administrative decision was based on a consideration of all relevant factors and whether there was a clear error of judgement. Sabin v. Butz, 515 F.2d 1061,1066-67 (10th Cir. 1975); Chrysler Corp. v. Dept. of Transportation,472 F.2d 659,670(6th Cir.1972).

It is submitted that the Board of Immigration Appeals erred in affirming the decision of the Immigration Judge denying petitioner's motion to reopen his proceeding in order to apply for suspension of deportation under section 244(a)(1). In affirming the decision of the Immigration Judge, the Board of Immigration Appeals adopted as its own a decision that was arbitrary, capricious, and an abuse of discretion.

In his Order Denying Motion to Reopen, the Immigration Judge repeatedly reached conclusions that were irrelevant or contrary to the substantial weight of the evidence of record. The Immigration Judge did not take issue with the fact that petitioner had been in the United States for the required seven years at the time of his motion to reopen deportation proceedings. However, he noted that the seven years accrued during the time in which petitioner was supposed to depart voluntarily from the United States. Section 244(a)(1) requires continuous physical presence in the United States for a "period of not less than seven years immediately preceding the date of such application...." Neither the statute not the case law prescribes more than seven years and neither source sets out rigid rules for the manner in which the required time must accrue.

Matter of Lee, 11 I & N Decs.649(B.I.A.1966), cited by respondent in its Brief in Opposition to Motion to Reopen has been overruled in Asimakopoulos v. I.N.S., 445 F.2d 1362,1363 (9th Cir. 1971). In Matter of Lee, the alien has secured a private congressional bill in order to gain the last two years needed

to come within the seven year requirement of Section 244(a)(1). The Board of Immigration Appeals, relying on language in a congressional report, held that where an alien had spent a significant part of the required seven year in protected status the alien would be obliged to show "particularly strong equities" in addition to the statutory requirement in section 244 (a)(1) of "extreme hardship". In overruling Matter of Lee, the court in Asima Kopoulos held that although section 244 grants the Attorney General discretion in suspending deportation of aliens, an alien who has spent the greater part of his seven years in protected status may not be classified separately from all other aliens and be required to prove particularly strong equities in addition to the explicit statutory requirement of "extreme hardship" 445 F.2d at 1364-65 Asimakopoulos supports petitioner's contention that the emphasis in section 244(a)(1) is on the requirement of seven years' continuous physical presence, and not on the manner in which the seven years accrued. Matter of Sipus, Int. Dec. #2172(B.I.A. 1972). also citied by respondent in its Brief in Opposition to Motion to Reopen, bears little resemblance to the instant case. In Sipus the alien did not move to reopen her deportation proceedings under section 244 until two months after the deadline for her voluntary departure hdd passed. In addition, the alien had made no showing of any hardship to herself or to any family member and had demonstrated a lack of good faith by not apprising the Immigration and Naturalization Service or the Board of Immigration Appeals of a collateral proceeding she had instituted under section 106(a) to review her original deportation order.

Clearly the fact situation existing in Matter of Sipus and the instant case are so different as to render any comparison of questionable value.

The most blatant instances of arbitrariness in the decision of the Immigration Judge are to be found in his evaluation of the hardship which would be incurred by petitioner's sister and her family if petitioner's contribution were to cease:

> The hardship if any on the (petitioner's) sister is certainly of a minimal nature since her husband is capable of being employed and may in fact be again re-employed by this time and the sister herself is employed earning a salary of a $100.00 per week.
>
> (Order Denying Motion to Reopen, page 2)

These conclusions are directly contrary to the substantial weight of the evidence of record. Petitioner's sister stated in her affidavit that her husband suffered a back injury and consequently was unable to work as a truck driver, his regular form of employment. Lacking experience in any other type of job, petitioner's brother-in-law is an unskilled individual with questionable prospects for steady employment. As part of the basis for his decision, the Immigration Judge speculated that the sister's husband might have become re-employed. Such is not the case. Without the financial support provided by petitioner, his sister's family of four will have no independent means of support other than the $100.00 per week earned by petitioner's sister. It seems difficult to understand how the Immigration Judge, in

in denying petitioner's motion to reopen deportation proceedings, could conclude that"(t)he hardship if any on the (petitioner's) sister is certainly of a minimal nature....."

The ultimate exercise of administrative discretion denying suspension of deportation is reviewable on appeal for the purpose of determining whether the administrative action was arbitrary or capricious or an abuse of discretion. Rassano v.I.N.S., 492 F.2d 220,227 (7th Cir. 1974). It is submitted that the Board of Immigration Appeals erred in affirming the decision of the Immigration Judge denying petitioner's motion to reopen his deportation proceeding in order to apply for suspension of deportation under section 244 (a)(1).

The Board of Immigration Appeals, in affirming the Immigration Judge's decision which denied petitioner a hearing on his motion to reopen deportation proceedings, violated the due process clause of the Fifth Amendment. The courts have reviewing power under the claim of due process of law where the denial of discretionary relief in respect to reopening deportation proceedings was arbitrary. Wolf v. Boyd, 238 F.2d 249,257(9th Cir. 1956); cert.denied,353 U.S. 936(1957) rehearing denied, 353 U.S. 989 (1957). While it is conceded that petitioner had an initial deportation hearing on May 7, 1975, this in no way mitigated the necessity as a matter of justice, for his having a hearing before the Immigration Judge on his motion to reopen where new benefits had accrued. It should be noted that petitioner's hearing on May 7, 1975 was a summary hearing on the multiple accelerated Summary Hearing Calender at which he was not represented by Counsel. Furthermore his attorney was denied oral

argument before the Board of Immigration appeals.

The right to be heard when one's interests are acutely affected by the actions of an administrative agency is of cardinal importance. "It is fundamentally abhorrent to our system of jurisprudence to deny a hearing to a litigant where justice and law require that a hearing be held." National Broadcasting Co. v. F.C.C., 362 F. 2d 946,953(D.C. Cir. 1966).

For the Board of Immigration Appeals to deny petitioner a hearing at this critical stage of the administrative process was a grave injustice and further compounded the Board's subsequent error of affirming and thus adopting as its own a decision by the Immigration Judge which was arbitrary, capricious and an abuse of administrative discretion.

III. THE FAILURE OF THE IMMIGRATION JUDGE AND THE BOARD OF IMMIGRATION APPEALS TO RULE ON PETITIONER'S REQUEST FOR A REINSTATEMENT OF THE PRIVILEGE OF VOLUNTARY DEPARTURE WERE ARBITRARY AND CAPRICIOUS ACTION AND CONSTITUTED A FAILURE BY THESE ADMINISTRATIVE BODIES TO EXERCISE THEIR DISCRETION.

Section 244(e) of the Immigration and Nationality Act States:

The Attorney General may, in his discretion, permit any alien under deportation proceedings, other than an alien within the provisions of paragraph (4), (5), (6), (7), (11), (12), (14), (15), (16), (17), or (18) of section 241(a) (and also any alien within the purview of such paragraphs if he is also within the provisions of paragraph (2) of subsection (a) of this section),

to depart voluntarily from the United States at his own expense in lieu of deportation if such alien shall establish to the satisfaction of the Attorney General that he is, and has been a person of good moral character for at least five years immediately preceding his application for voluntary departure under this subsection.

At petitioner's deportation hearing on May 7, 1975, the Immigration Judge found that petitioner qualified under section 244(e) for voluntary departure and petitioner was granted the privilege of departing voluntarily from the United States on or before July 15, 1975, with an alternate order of deportation to Colombia should he not depart as required. When petitioner, on July 11, 1975, moved to reopen his deportation proceedings under section 244 (a)(1) because of the accrual on July 4, 1975 of the seven years' physical presence required by section 244(a)(1), his time for voluntary departure had not yet elapsed. Although petitioner in his moving papers had requested an extension of his time for voluntary departure, the Immigration Judge in denying the motion to reopen (Order of October 10, 1975) after the expiration of the voluntary departure time granted was silent to its reinstatement. Thus petitioner, in pursuing his motion to reopen his deportation proceeding, lost his previously established privilege of voluntary departure. The silence of the Immigration Judge regarding reinstatement of the privilege of voluntary departure guaranteed that petitioner would lose this substantial privilege. This clear error of judgement by the Immigration judge was repeated by the Board of Immigration Appeals which was similarly silent in

its decision of January 21, 1976 regarding a request by petitioner for reinstatement of the privilege of voluntary departure, thus also failing to exercise its administrative discretion.

Respondent, in its Brief in Opposition to Motion to Reopen, noted that petitioner's motion to reopen might be "construed to include also a prayer to restore voluntary departure....." Matters relating to the granting or witholding of the privilege of voluntary departure are subject to review by the courts to determine whether there has been a clear abuse of administrative discretion or a clear failure to exercise discretion. Ullah v. Hoy, 278 F.2d 194,196(9th Cir. 1960) Furthermore the courts can compel an official to exercise his discretion where he has obviously failed or refused to do so. Mastrapasua v. Shaughnessy, 180 F.2d 999,1002 (2nd Cir 1950).

It is urged that the court construe petitioner's motion as a prayer to restore to petitioner the privilege of voluntary departure, and to this end petitioner wishes to distinguish Matter of Onyedibia, Int. Dec.#2307 (B.I.A. 1974), a decision cited by respondent, from the instant case. In Onyedibia the aliens filed a motion to reopen after the expiration of the voluntary departure time without showing the existance of compelling reasons for their failure to depart before the deadline. Clearly the fact situation differs substantially from that present in the instant case. In the instant case petitioner filed his motion to reopen deportation proceedings before the expiration of his voluntary departure time. Unlike Onyedibia, there exists in the

instant case a compelling reason for the restoration of petitioner's privilege of voluntary departure; viz, petitioner's time for voluntary departure expired while he was pursuing administrative remedies. The district director was silent as to his request and for an extension of voluntary departure time and the Immigration Judge and Board of Immigration Appeals were silent in regard to the restoration of voluntary departure, a matter of vital importance to petitioner.

It is respectfully requested that this Court consider the lack of response to petitioner's attempt to secure on extension and reinstatement of his voluntary departure time as a prime example of the arbitrary and capricious manner exercised by the Immigration Judge and the Board of Immigration appeals in denying petitioner's motion to reopen his deportation proceeding.

IV. CONCLUSION

Petitioner recognizes that the courts are reluctant to interfere in administrative decision-making and that courts do so only to prevent extreme hardship and injustice. As was noted earlier, section 244 was intended to prevent such hardship and injustice and the courts have held that this section should not be strictly and technically construed. Wadman v. I.N.S.,329 F.2d 812,816-17 (9th Cir. 1964); Git Foo Wong v. I.N.S., 358 F.2d 151, 154 (9th Cir. 1966).

The extreme hardship and injustice which section 244 was designed to prevent would in fact result from petitioner's deportation. In view of petitioner's length of time in the United

States, his family ties firmly fixed in this country, and his showing of good moral character for the entire period, it is evident that the Immigration Judge and the Board of Immigration Appeals were arbitrary and capricious in their decisions. It was a clear abuse of discretion for these administrative bodies to deny petitioner's request that his deportation proceedings be reopened to permit petitioner to apply for suspension of deportation. It was a further abuse of discretion and denial of due process to deny a hearing on petitioner's motion to reopen his deportation proceeding.

It is respectfully requested that this Court direct that the order entered by the Board of Immigration Appeals be set aside and remand this case to the Board of Immigration Appeals with directions to reopen deportation proceedings to permit petitioner to apply for suspension of deportation and other discretionary relief.

Dated: New York, New York
May 7th, 1976

Respectfully submitted,

RHODA K. DRYER
485 Madison Avenue
New York, N.Y. 10022

Attorney for Petitioner

File No. A 18 095 575

UNITED STATES OF AMERICA:

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

In the Matter of

VALENCIA BURGOS, LUIS MARIANO
Respondent.

In Deportation Proceedings Under Section 242 of the Immigration and Nationality Act

DECISION OF THE IMMIGRATION JUDGE

Upon the basis of respondent's admissions I have determined that he is deportable on the charge(s) in the Order to Show Cause.

Respondent has made application solely for voluntary departure in lieu of deportation.

ORDER: It is ordered that in lieu of an order of deportation respondent be granted voluntary departure without expense to the Government on or before _____ (Date)

or any extension beyond such date as may be granted by the district director, and under such conditions as the district director shall direct.

IT IS FURTHER ORDERED that if respondent fails to depart when and as required, the privilege of voluntary departure shall be withdrawn without further notice or proceedings and the following order shall thereupon become immediately effective: respondent shall be deported from the United States to _____ on the charge(s) contained in the Order to Show Cause.

IT IS FURTHER ORDERED that if the aforenamed country advises the Attorney General that it is unwilling to accept the respondent into its territory or fails to advise the Attorney General within three months following original inquiry whether it will or will not accept respondent into its territory, the respondent shall be deported to _____

Copy of this decision has been served on respondent.

Appeal: Waived ~~reserved~~

Date: _____

Place: NYC

_____
(Immigration Judge)

FORM I-39
(REV. 5-1-73)N

BEST COPY AVAILABLE

- -

July 11, 1975

. . tur lization Service

U.S. DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

Form approved
Budget Bureau No. 43-R0245

APPLICATION FOR SUSPENSION OF DEPORTATION

(Under Section 244 of the Immigration and Nationality Act)

(PLEASE READ ADVICE AND INSTRUCTIONS ON PAGE 5 BEFORE FILLING IN FORM)

FEE STAMP

(1) I, the undersigned, hereby request that my deportation be suspended under the provisions of section 244 of the Immigration and Nationality Act. I believe that I am eligible for suspension of deportation because such deportation would result in extreme hardship to myself and/or to my sister, Mary Valencia de Vargas
(Husband, wife, father, mother, child, children)
who is/are ☐ citizen(s) ☒ lawful permanent resident(s) of the United States, and I have been physically present in the United States without any absence since [illegible] 196[illegible]

(2a) My present true name is: (First, Middle, Last)						(2b) My name given at birth was
[illegible]						[illegible]
(3) I have been known by the additional names	My sex is	(Height)	(Color of eyes)	(Color of hair)	(Complexion)	
none	male	5'6"	brown	brown	white	
(4) I was born at (Place and country)	on (Month) (Day) (Year)	My nationality is (Country of which citizen or subject)				
Medellin, Colombia	5/20/50	Colombia				
(5) I now reside at (Apt. number and st. in care of)	(Number and street)	(City or town)	(State)	(ZIP Code)		
[illegible]	[illegible]	Woodside, Queens, N.Y.		11377		

(6) I first entered the United States under the name of (First) (Middle) (Last)	on (Month) (Day) (Year)	At (Seaport, airport, or land border port)
[illegible]	7/11/61	Miami, Florida
Name of vessel or other means of conveyance	I was admitted as a (Insert visitor, crewman, transient, student, permanent resident, or other)	
[illegible]	student	
For a period of time to expire (Insert date of period for which admitted)	My last extension of stay in the United States expired on (date)	
7/1/62		

If not inspected or if entry occurred at other than a regular port, describe the circumstances as accurately as possible

Since the date of my first entry I departed from and returned to the United States at the following places and on the following dates. (If you have never departed from the United States since your original date of entry, insert "no departures.")

DEPARTED		RETURNED		Inspected and Admitted (Answer Yes or No)
Port	Date (Month–Day–Year)	Port	Date (Month–Day–Year)	
[illegible]				

(7) During the last 10 years, I have been in the United States as listed below. (If less than 10 years, set forth the information for the period you have been in the United States.) List present address FIRST, and work back.

Street and Number–City or Town–State (Include number of hotel room, furnished room or apartment in present address)	From Month	From Year	To Month	To Year
[illegible]	[illegible]	[illegible]	present	
[illegible]	[illegible]	[illegible]	[illegible]	61

(Use a separate sheet for additional entries)

Form I-256A
(Rev. 9-1-69)

(8) During my residence at the places in the United States named above I was employed by the following-named persons or firms. (Begin with present employment and proceed backwards. Any periods of unemployment or school attendance should be specified.)

Full Name of Employer	Address of Employer	Earnings Per Week (Approximately)	Type of Work Performed	From— Month	From— Year	To— Month	To— Year
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

(Use a separate sheet for additional entries.)

(9) If self-employed, describe nature of business, name under which business is conducted, and net income derived therefrom _____

(10) I ☐ AM ☐ AM NOT MARRIED. If married, the name of my spouse is _____ We were married on (Month) (Day) (Year) _____ at (City or town) _____ (State or country) _____

She or he was born at (City or town) _____ (State or country) _____ on (Month) (Day) (Year) _____ and is a citizen of (Country) _____

(11) (If your spouse is other than a native-born United States citizen, answer the following.) She or he arrived in the United States at (City or town) _____ on (Month) (Day) (Year) _____ ☐ was ☐ was not admitted for permanent residence.

was naturalized on (Month) (Day) (Year) _____ (Place naturalized) _____

(12) I ☐ have ☐ have not been previously married. (If previously married, give facts relative to name of each prior spouse, and manner, date, and place of termination of each prior marriage) _____

(13) My present spouse ☐ has ☐ has not been previously married. (If spouse previously married, give facts relative to name of each prior spouse and manner, date, and place of termination of each prior marriage) _____

(14) My spouse ☐ is ☐ is not employed. If employed, give salary and place of employment _____

(15) The assets of myself (and my spouse), not including clothing and household necessities, are: Self (or jointly owned with spouse)

Cash, Stocks and Bonds	$ [illegible]	Cash, Stocks and Bonds	$
Real Estate	$	Real Estate	$
Other (Describe)	$ [illegible]	Other (Describe)	$
Total	$ [illegible]	Total	$

(16) I have _____ children. Give information requested in each column:

Name	Age	Place of Birth	Now Residing at—	Citizen of	Legal Permanent Resident of U.S.
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

The names, assets, and earnings of my children in the United States who have separate incomes are: _____

(17) I ☐ have ☐ have not after entry into the United States acquired the status of an exchange alien

(17) I ☐ have ☒ have not after entry into the United States acquired the status of an exchange alien

(18) I ☒ have ☐ have not submitted yearly address reports as required by the amendment to the Alien Registration Act effective September 23, 1950, and the Immigration and Nationality Act 1969

(19) I ☐ have ☒ have not been the recipient of public or private relief or assistance. If you have, give full details including date, place, and amount received

(20) If you have served in the Armed Forces of the United States, state branch (Army, Navy, & service number, etc.)

Date and place of entry on duty Date of discharge

Type of discharge (honorable dishonorable, etc.) I served in active duty status from to

(21) If male, did you register under the Selective Service (Draft) Law of 1917, 1918, 1940, 1948, 1951, or later Draft Laws? Yes ☒ No ☐

If "Yes," give date, Selective Service number & local draft board number

Were you ever exempted from service because of conscientious objection, alienage, or any other reason? Yes ☐ No ☒

(22) Have you ever deserted from the military or naval forces of the United States while this country was at war? Yes ☐ No ☒

(23) Have you ever left the United States or the jurisdiction of the district where you registered for the draft to avoid being drafted into the military or naval forces of the United States? Yes ☐ No ☒

(24) List membership, past or present, in all organizations, societies, clubs, unions, and associations whether in the United States or a foreign country, and the periods and places of such membership. Include membership in any Communist Party or organization or in any section, subsidiary, branch, affiliate, or subdivision of any such party or organization

[illegible] Council of [illegible], [illegible]

(25) I ☐ have ☒ have never (either in the United States or any other country) been arrested, summoned into court as a defendant, convicted, fined, imprisoned, or placed on probation, or forfeited collateral for an act involving a felony, misdemeanor, or breach of any public law or ordinance

If answer is in the affirmative in any particular give complete information in the space immediately following

(Use a separate sheet for additional entries.)

(26) I can return to my country of ☒ Birth ☐ Nationality ☐ Last Residence without fear of persecution. If unable to return to any of these countries, give reasons

(Check the appropriate block or blocks)

(27) I ☐ would ☒ would not be able to arrange a trip outside the United States to obtain an immigrant visa. If not, explain

[illegible] immigrant [illegible]

(28) Give the required information about your parents, brothers, and sisters. As to residence, show street address, city, and state, if in the United States, otherwise show only country

Name	Relationship To Me	Now Residing At	Birthplace	Citizen Of	Lawful Permanent Resident of U.S.?
[illegible]	father	Colombia	Colombia	Colombia	No
[illegible]	mother	"	"	"	"
[illegible]	sister	47-1[illegible] 47th Ave, Woodside, N.Y.	"	"	Yes
[illegible] Valencia	"	Colombia	"	"	"
[illegible] Valencia	bro.	"	"	"	"
[illegible] Valencia	sis.	"	"	"	"
[illegible]	"	"	"	"	"
[illegible]	bro.	"	"	"	"
[illegible]	"	"	"	"	"
[illegible]	"	"	"	"	"
[illegible]	"	"	"	"	"
[illegible] Valencia		"	"	"	"
[illegible] Valencia	"	"	"	"	"
Lucia Valencia	"	"	"	"	"

BEST COPY AVAILABLE

IF THIS APPLICATION IS BASED ON HARDSHIP TO A PARENT OR PARENTS, QUESTIONS 29 TO 32 MUST BE ANSWERED.

(29) As to such parent who is not a citizen of the United States, give date and place of arrival in the United States including full details as to manner and terms of admission to this country ______________________________

____

____

(30) My father ☐ is ☐ is not employed. If employed, give salary and place of employment ______________________________

____

(31) My mother ☐ is ☐ is not employed. If employed, give salary and place of employment ______________________________

____

(32) The assets of my parents (not including clothing and household necessities) are:

Assets of father consist of the following:		Assets of mother consist of the following:	
Cash, Stocks and Bonds	$	Cash, Stocks and Bonds	$
Real Estate	$	Real Estate	$
Other (Describe)	$	Other (Describe)	$
Total	$	Total	$

(33) The following certificates or other documents are attached hereto as a part of this application. (Refer to instruction 2, page 5, for documents which *must be attached*.)

Nature of Document

Birth Certificate of Applicant with translation
Birth Certificate of Applicant's sister, Fury Vargas nee Valencia with translation
Marriage Certificate of Fury Valencia to Rodrigo Vargas
Letter of Spanish American Institute re Applicant's attendance
Applicant's work records from Morning Steel Partitions, Inc.
Applicant's tax returns for years 1969, 1970, 1971, 1972, [illegible]
New York City Good Conduct certificate of Applicant
Affidavit of Fury Vargas
Affidavit of Joseph [illegible], Applicant's employer
Affidavit of John [illegible], a U.S. citizen as to Applicant's good moral character
Affidavit of Anthony [illegible], a U.S. citizen as to Applicant's good moral character.
Two photographs of Applicant

(APPLICATION NOT TO BE SIGNED BELOW UNTIL APPLICANT APPEARS BEFORE A SPECIAL INQUIRY OFFICER)

I, ______________________________ do swear (affirm) that the contents of the above application, with corrections numbered ( ) to ( ), and including the documents attached hereto, are true to the best of my knowledge, and that this application is now signed by me with my full, true name. So Help Me God.

____
(Complete and true signature of applicant or parent or guardian)

Subscribed and sworn to before me by the above named applicant at ______________________________ this ______________ day of ______________, 19______

____
Special Inquiry Officer

The City of New York

POLICE DEPARTMENT
NEW YORK, N.Y. 10038

ADDRESS INQUIRIES TO
PUBLIC INQUIRY & REQUEST SECTION
GOOD CONDUCT UNIT

REFER TO
ABOVE NUMBER

GOOD CONDUCT CERTIFICATE

NAME	Luis Mariano Valencia Burgos
ADDRESS	47 18 47th Avenue Woodside, N.Y. 11377

DATE PROCESSED	7-1-75
DATE OF BIRTH	5-2[illegible]- 50
SEX	M
COUNTRY	Immigration

EXPIRES IN 60 DAYS

RIGHT HAND

1.–Right Thumb	2.–R. Index Finger	3.–R. Middle Finger	4.–R. Ring Finger	5.–R. Little Finger

LEFT HAND

6.–Left Thumb	7.–L. Index Finger	8.–L. Middle Finger	9.–L. Ring Finger	10.–L. Little Finger

Four fingers taken simultaneously

Left Hand

Amputations

Left Thumb	Right Thumb

Four fingers taken simultaneously

Right Hand

APPLICANT's SIGNATURE

RELATIVE TO YOUR APPLICATION FOR A GOOD CONDUCT CERTIFICATE PLEASE BE ADVISED THAT THE FILES OF THIS DEPARTMENT FAIL TO SHOW ANY ARREST RECORD UNDER YOUR FINGERPRINTS.

NO CRIMINAL RECORD
BY INFORMATION GIVEN
IDENT. UNIT NYC P.D.

YOURS VERY TRULY,

CHIEF OF OPERATIONS

PD-327-061 (Rev 10/74) DMP-920062-30M Sets

AFFIDAVIT

Re: LUIS MARIANO VALENCIA
File No. A16 095 575

STATE OF NEW YORK)
) SS:
COUNTY OF)

NURY VARGAS, being duly sworn, deposes and says:

That I am a permanent resident of the United States since June 9, 1967. My immigration file Number is A14 889 716.

I am the sister of Luis Mariano Valencia and make this affidavit in support of his application for suspension of deportation.

I am married to Rodrigo Vargas who is also a permanent resident of the United States and has been since November 21, 1967. His immigration file number is A14 818 184. We have two children, Elizabeth Vargas, age 4 and Michelle Vargas, age 2, both of whom are citizens of the United States.

If my brother, Luis Mariano Valencia is required to depart from the United States at this time, I will suffer great hardship in that he lives with me and my family and contributes approximately one half of our support. My husband is unemployed for several months. He had been employed as a delivery man for United Parcel Service. However, he injured his back and cannot work. He cannot collect unemployment insurance and thusfar his claim for disability benefits has not been granted. I am working and earn $100.00 per week, which is not sufficient to support the four of us. Were it not for my brother's financial assistance, we would have to apply for public assistance which it is my greatest wish not to do since I feel it is degrading, shameful and totally contrary to the dignity I wish for myself and my family.

My said brother, Luis Mariano Valencia, has lived with me and my family continuously since his arrival in the United States on July 4, 1968. During this entire period of time he has been considerate to us and a great help, and has deported himself

well, with honesty and good moral character and in all respects honorably.

It is my sincere hope that my said brother's application for suspension of deportation is granted.

Nury Vargas.
NURY VARGAS

Sworn to before me

this 14 day of July, 1975.

Stanley H. Silverman

STANLEY H. SILVERMAN
Notary Public, State of New York
No. 52-3671120
Qualified in Suffolk County
Commission Expires March 30, 1977

AFFIDAVIT

Re: LUIS MARIANO VALENCIA
File No. A16 095 575

STATE OF NEW YORK)
) SS:
COUNTY OF)

NURY VARGAS, being duly sworn, deposes and says:

That I am a permanent resident of the United States since June 9, 1967. My immigration file Number is A11 889 716.

I am the sister of Luis Mariano Valencia and make this affidavit in support of his application for suspension of deportation.

I am married to Rodrigo Vargas who is also a permanent resident of the United States and has been since November 21, 1967. His immigration file number is A11 810 104. We have two children, Elizabeth Vargas, age 4 and Michelle Vargas, age 2, both of whom are citizens of the United States.

If my brother, Luis Mariano Valencia is required to depart from the United States at this time, I will suffer great hardship in that he lives with me and my family and contributes approximately one half of our support. My husband is unemployed for several months. He had been employed as a delivery man for United Parcel Service. However, he injured his back and cannot work. He cannot collect unemployment insurance and thusfar his claim for disability benefits has not been granted. I am working and earn $100.00 per week, which is not sufficient to support the four of us. Were it not for my brother's financial assistance, we would have to apply for public assistance which it is my greatest wish not to do since I feel it is degrading, shameful and totally contrary to the dignity I wish for myself and my family.

My said brother, Luis Mariano Valencia, has lived with me and my family continuously since his arrival in the United States on July 1, 1968. During this entire period of time he has been considerate to us and a great help, and has deported himself

well, with honesty and good moral character and in all respects honorably.

It is my sincere hope that my said brother's application for suspension of deportation is granted.

Ruy Vargas.
RUY VARGAS

Sworn to before me

this 14 day of July, 1975.

Stanley H Silverman

STANLEY H. SILVERMAN
Notary Public, State of New York
No. 52-3671120
Qualified in Suffolk County
Commission Expires March 30, 1977

AFFIDAVIT

LUIS MARIANO VALENCIA-B.
File No. A18 093 575

STATE OF NEW YORK)
) SS:
COUNTY OF Queens)

JOHN D'ATTOMA, being duly sworn, deposes and says:

That I am a citizen of the United States, having been born in Queens, New York on July 9, 1926.

That I have known Luis Mariano Valencia since October 1969. We met at work. We both work for Monning Steel Partitions Inc. at 54-60 46th Street, [illegible] New York.

That during the entire period of time that I have known Mr. Valencia, I have known him to be a person of good moral character, honest, reliable and an asset to Monning Steel Partitions Inc.

JOHN D'ATTOMA

Sworn to before me this
15th day of July, 1975.

Mary C. Aspinall

MARY C. ASPINALL
Notary Public, State of New York
No. 41-5106275
Qualified in Queens County
Term Expires March 30, 1977

AFFIDAVIT

LUIS MARIANO VALENCIA-D.
File No. A18 095775

STATE OF NEW YORK)
) SS:
COUNTY OF Queens)

ANTHONY CALANDRA, being duly sworn, deposes and says:

That I am a citizen of the United States, having been born in Brooklyn, New York on March 27, 1932.

That I have known Luis Mariano Valencia since October 1969 when he came to work at Monnin Steel Partitions Inc. at 51-03 16th Street, Maspeth, N. Y., where I have been working since prior to that time.

I have known Mr. Valencia to be a person of good moral character during the entire period from October 1969 to the present.

Anthony Calandra
ANTHONY CALANDRA

Sworn to before me this

15th day of July, 1975.

Mary C Aspinall

MARY C. ASPINALL
Notary Public, State of New York
No. 41-0106275
Qualified in Queens County
Term Expires March 30, 1977

AFFIDAVIT

Re: [illegible]
File No. A16 [illegible]

STATE OF NEW YORK)
) SS:
COUNTY OF)

JO[illegible] [illegible]ALLA[illegible]ER, being duly sworn, deposes and says:

That I am the president of [illegible] Steel Partitions Inc. located at 5[illegible]-[illegible] [illegible] Street, [illegible], N. Y.

That [illegible] [illegible]riano Valencia is employed by [illegible] Steel [illegible] Inc. as a welder and has been so employed since October [illegible] [illegible]. [illegible] responsible and a diligent and very competent worker.

During the entire period of his employment with us, I have [illegible] him to be a person of good moral character.

I submit herewith photocopies of his work records which are true copies of the records kept by us and in our possession.

S/ JOSEPH GALLAGHER
JOSEPH [illegible]

Sworn to before me

this [illegible] day of July, 1973.

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
20 West Broadway
New York, New York 10007

In the Matter of	
Valencia-Burgos, Luis M.	File Number: A18 005 575
RESPONDENT	

IN DEPORTATION PROCEEDINGS

IN BEHALF OF RESPONDENT: Rhoda K. Dryer, Esquire
17 Old Colony Drive
Larchmont, New York 10538

DECISION ON MOTION TO REOPEN

The respondent, a native and citizen of Columbia, entered the U.S. as a student on July 4, 1968, authorized ultimately to remain until July 4, 1970. He attended school from the onset for one year; joined a labor union and went to work in October, 1969. He did not depart by the required date. The Immigration and Naturalization Service attempted to locate the respondent between August 1969 & May 1975. He was taken into detention by the Service on May 6, 1975. A $1000 delivery bond was then posted for his r[illegible]. At a deportation hearing, held on May 7, the respondent was granted the privilege of departing voluntarily from the U.S. on or before July 15, 1975, with an alternate order of deportation to Columbia should he not depart as required.

On July 11, 1975 the respondent moved to reopen his deportation proceedings to apply for the privilege of suspension of deportation and to extend the time for his voluntary departure from the U.S. until his motion should be determined. The District Director did not extend the time for voluntary departure of the r[illegible] from the U.S. but reinstated proceedings for deportation. His parents and eleven of his twelve siblings reside in his native country. He is twenty-five years old and is unmarried. The only claim of hardship presented is that he contributes partial support for his sister who resides illegally in the U.S., works and whose husband is unemployed, that the contribution helps the sister and her husband obtain public relief rolls. The respondent has demonstrated only a bare minimum eligibility for the relief of suspension of deportation & countervailing equities are not present. See Matter of Lee, 11 I & N Dec. 620 (BIA 1966); Matter of Otani, 11 I&N Dec. 439 (BIA 1966); cf U.S. ex rel. Mintopoulos vs. Murphy, 235 U.S. 716 (1957). To the motion to reopen be construed to include a plea for voluntary departure no compelling reason to restore it has been advanced. See Matter of Oyarbide, 11 I&N Dec. 589 (BIA 1966).

The Motion should be denied.

John K. Dyer
JOHN K. DYER
Trial Attorney
NEW YORK DISTRICT

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

OCT 10 1975

In the Matter of	File: A18 095 575 - New York	
Deportation Proceedings:	In Behalf of Respondent:	Rhoda K. Dryer, Esq. 17 Old Colony Drive Larchmont, New York 10538
against		
LUIS MARIANO VALENCIA BURGOS	In Behalf of Service:	John K. Speer, Esq. Trial Attorney New York,N.Y. 10007
- REspondent -		

ORDER DENYING MOTION TO REOPEN

The respondent is an alien, a native and citizen of Colombia, who last entered the United States at Miami, Florida on July 4, 1968, at which time he was admitted as a nonimmigrant student. He was authorized to remain until July 4, 1970 and remained beyond that date without permission thereby becoming subject to deportation on the charge contained in his Order to Show Cause. He was given a hearing in deportation proceedings on May 7, 1975, was found to be deportable as charged but was granted the privilege of volunt-ary departure from the United States on or before July 15, 1975. He has now submitted a motion to reopen these proceedings to apply for Suspension of Deportation on the ground that his deportation from the United States would result in extreme hardship to his sister who is a permanent resident of the United States. The hardship in question is set forth in an affidavit submitted with the moving papers which states that the sisters husband has been unemployed

for several months and that the couple has two citizen children. However, the sister is working and earning $100 per week and she claims that her broth-er lives with them and contributes towards their support.

The respondent has been in the United States barely more than seven years. The seven years accrued during the time, during which he was supposed to depart voluntarily from the United States. The hardship if any on the respondent's sister is certainly of a minimal nature since her husband is capable of being employed and may in fact be again re-employed by this time and the sister herself is employed earning a salary of $100 per week. I find therefore that an inadequate basis for the grant of Suspension of Deportation has been set forth in the motion papers and no useful purpose would be served by re-opening. Accordingly, the motion is denied.

IRA FIELDSTEEL
Immigration Judge

NOTICE OF APPEAL TO THE BOARD OF IMMIGRATION APPEALS

SUBMIT IN TRIPLICATE TO:

IMMIGRATION AND NATURALIZATION SERVICE

____

____

Fee Stamp

In the Matter of:

V[illegible]NCIA BURGOS, Luis Mariano

File No. 10 095 575

1. I hereby appeal to the Board of Immigration Appeals from the decision, dated October 10, 1975, in the above entitled case.

2. Briefly, state reasons for this appeal.

The Immigration Judge in deciding the motion to re-open on the basis of the papers submitted could not have had the complete understanding of the entire case and should have allowed argument on the motion.

The Immigration Judge in his decision dated October 10, 1975 made certain factual conclusions not based upon any evidence before him, to wit, that the hardship, if any, on the respondent's sister, is certainly of a minimal nature since her husband is capable of being employed and may, in fact, be employed by this time. The affidavit of Mary V[illegible], the respondent's sister, indicates that her husband h[illegible] back and cannot work.

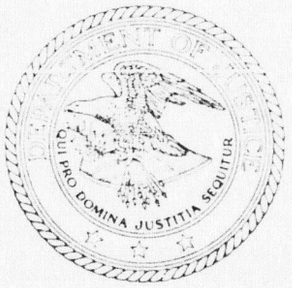
The Immigration Judge made no provision for restoration of voluntary [illegible].

3. I [illegible] oral argument before the Board of [illegible] Appeals in [illegible]

4. I [illegible] [illegible] within [illegible].

[illegible] fully [illegible] which [illegible] a brief.

BEST COPY AVAILABLE



United States Department of Justice
Board of Immigration Appeals
Washington, D.C. 20530

File: A18 095 575 - New York

In re: LUIS MARIANO VALENCIA-BURGOS

JAN 21 1976

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Rhoda K. Dryer, Esquire
17 Old Colony Drive
Larchmont, NY 10538

CHARGE:

Order: Section 241(a)(2), INA Act (8 U.S.C. 1251 (a)(2)) - Nonimmigrant student - remained longer than permitted

APPLICATION: Reopening

ORDER:

PER CURIAM. Oral argument is denied. The decision of the immigration judge is affirmed. The appeal is dismissed.

Chairman

UNITED STATES DEPARTMENT OF JUSTICE
IMMIGRATION AND NATURALIZATION SERVICE

PLEASE REFER TO THIS FILE NO

A18 095 575 DD/LM

January 30, 1976

Mr. Luis Mariano VALENCIA-Burgos
c/o N. VARGAS
47-18 47th Avenue. 2nd floor
Woodside, Queens, N.Y., 11377

Dear Sir:

This is a warning. Please read carefully.

It has been ordered that you be deported to COLOMBIA.
You will be informed when departure arrangements are complete. If needful, we will assist you as much as possible in arranging your personal affairs for departure.

Should you wish to return to the United States you must write this office or the American Consular Office nearest your residence abroad as to how to obtain permission to return after deportation. By law (Title 8 of United States Code, Section 1326) any deported person who returns without permission is guilty of a felony. If convicted he may be punished by imprisonment of not more than two years and/or a fine of not more than $1,000.00.

Please keep this letter and refer to the above file number when writing to this office.

Very truly yours,

CC: Nicola L. Leyton, Esq.
17 Old Colony Drive
Larchmont, N.Y., 10538

HAROLD J. GRACE
ASSISTANT DISTRICT DIRECTOR

L /AS

Advertencia importante. Lea cuidadosamente este aviso. FOR DEPORTATION

Se ha ordenado deportarlo a COLOMBIA.
Se le informará una vez finalizados los arreglos para su salida. Si fuera necesario, le prestaremos la mayor ayuda posible para arreglar sus asuntos personales antes de su salida.

Si usted deseara regresar a los Estados Unidos, debe escribir a esta oficina o al Consulado de los Estados Unidos más cercano a su residencia en el enterior con el fin de informarse sobre la forma de conseguir permiso para regresar después de haber sido deportado. Por ley (Título 8 del Código de los Estados Unidos, Sección 1326), toda persona deportada que regrese a los Estados Unidos sin permiso incurre en un delito mayor. De ser declarado culpable, puede recibir una pena de prisión no mayor de dos años y/o una multa que no exceda de 1.000 dólares.

Sírvase conservar esta carta y haga referencia al número de registro arriba indicado al escribir a esta oficina.

Form I-294
(Rev. 6-1-70) N

See Portuguese, Greek and Chinese translations on reverse.

* GPO : 1970 O - 388-068

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
20 West Broadway, New York, N. Y. 10007

File No. A18 095 575TU-SB
Date: FEBURARY 12, 1976

VALENCIA BURGOS, LUIS MARIANO
c/o N.VARGAS
47-18 47th AVE 2nd fl
WOODSIDE, N.Y.11377

As you know, following a hearing in your case you were found deportable and the hearing officer has entered an order of deportation. A review of your file indicates there is no administrative relief which may be extended to you, and it is now incumbent upon this Service to enforce your departure from the United States.

Arrangements have been made for your departure to COLOMBIA (country) on _____ (date) from NEW YORK, N. Y. (port of departure) on the BY TRANSPORTATION WHICH HAS NOT BEEN ARRANGED (name of vessel, airline, or other transportation)

You should report to a United States Immigration Officer at Room 9th floor (No.) NAVY YARD 126 FLUSHING AVE BKLYN,N.Y.11251 BLDG 300 xxx20 East Broadway, N.Y.C.xxx (address) at 9 AM FEBURARY 23, 1976 (hour and date)

completely ready for deportation. At the time of your departure from NEW YORK, N. Y. (place of surrender) you will be limited to 44 pounds of baggage.

Should you have personal effects in excess of this amount you must immediately contact Transportation Officer (name of officer) at ~~212 264-5978xx~~ 212 264-5978 212 264-5976 (phone no. and ext.), or call in person at the address noted above, and appropriate disposition of your excess baggage will be discussed with you.

cc/bag NORA M.DWYER, ESQ.
17 OLD COUNTY RD.
CARLE PLACE, N.Y.11377 cc/bag

Very truly yours,

HAROLD J.GRACE
ASSISTANT DISTRICT DIRECTOR
FOR DEPORTATION

Form I-166
(Rev. 4-1-69)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

670 673 570

AFFIDAVIT OF PERSONAL SERVICE

State of New York)
) S.S.:
County of New York)

SHAMIM PIRMOHAMED being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 86-05; 60th Road, Queens, New York, New York 11373.

That on the 7th day of May, 1976 at No. 1 St. Andrews Plaza, New York, New York 10007 deponent served the within Brief of Petitioner upon Mary P. Maguire, Special Assistant U.S. Attorney's Office the Attorney herein, by delivering a true copy thereof to her personally. Deponent knew the person so served to be the person mentionerd and described in said papers as the Special Assistant to the U.S. Attorney's Office therein.

Pirmohamed.
SHAMIM PIRMOHAMED

Sworn to before me on
7th day of May, 1976

ARTHUR D. CHOTIN
Notary Public, State of New York
No. 31-9822691
Qualified in New York County
Commission Expires March 30, 19...